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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,561	12/30/2003	Thomas R. Baranowski	0120-0249.15	8082

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EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,561

Applicant(s)

BARANOWSKI ET AL.

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-32 is/are pending in the application.
- 4a) Of the above claim(s) 22-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 8-21 in the reply filed on 6/6/05 is acknowledged. The traversal is on the ground(s) that the subject matter of groups I and II are sufficiently related so as to not present a serious burden to the examiner. This is not found persuasive because groups I and II are classified in different class and subclass and thus a search for both represents a serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 8-9, 11-12 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,381,914) in view of Doi et al. (US 4253580).

Koyama discloses a closure comprising a plastic shell (column 7, lines 34-50) having an end panel and an integral skirt downwardly extending from the periphery thereof (column 4, lines 35-68), said end panel having an inner surface (column 4, lines 35-68), a substantially oxygen impermeant liner adhered to at least a portion of said inner surface (column 4, lines 35-68), wherein said liner comprises a blend comprising polybutylene (column 8, lines 28-51 and column 13, lines 8-36), wherein said liner

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comprises a flat disk disposed over substantially the entire inner surface of said panel (column 9, lines 49-68), wherein said liner comprises an annular ring disposed over the peripheral portion of the inner surface of said end panel (6 from Fig. 1C and column 4, lines 35-68) (applies to instant claims 8, 15-16).

The difference between the instant claims and Koyama is the Koyama does not disclose a liner comprising a blend of a thermoplastic elastomer and polyisobutylene, wherein said thermoplastic elastomer comprises a polyolefin, a butyl-based rubber and a lubricant, wherein said liner comprises an interior portion and a peripheral portion, said peripheral portion having a thickness greater than said interior portion.

Doi discloses a liner comprising a blend of a thermoplastic elastomer and polyisobutylene (column 2, line 54 through column 3, line 24), wherein said thermoplastic elastomer comprises a polyolefin, a butyl-based rubber and a lubricant (column 2, line 54 through column 3, line 24), wherein said liner comprises an interior portion and a peripheral portion, said peripheral portion having a thickness greater than said interior portion (column 8, lines 11-23) in a liner for bottles for the purpose of providing improved sealing and peelability (applies to instant claims 8-9 and 17).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a liner comprising a blend of a thermoplastic elastomer and polyisobutylene, wherein said thermoplastic elastomer comprises a polyolefin, a butyl-based rubber and a lubricant, wherein said liner comprises an interior portion and a peripheral portion, said peripheral portion having a

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thickness greater than said interior portion in the liner of Koyama in order to provide improved sealing and peelability.

With regard to claims 11-12 and 18-19, optimization of result effective variables such as concentration and thickness, absent a showing of clear and convincing evidence of an unexpected results, is obvious and within the level of one of ordinary skill in the art through routine experimentation (MPEP 2144). Therefore it would have been obvious to one of ordinary skill in the art to have provided applicant's recited concentration and thickness in order to provide improved gas barrier properties, improved sealing and improved peelability.

With regard to claims 20-21, the recited oxygen permeability is an expected result and is obtained upon the combination of the references since the combined references provide a liner comprising a blend of a thermoplastic elastomer, polybutylene and polyisobutylene as discussed above. It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the recited oxygen permeability in order to improve the gas barrier properties of the liner.

4. Claims 10 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyama et al. (US 5,381,914) in view of Doi et al. (US 4253580), as applied to claims 8-9, 11-12 and 15-21 above, and further in view of Riffer (US 6371318 B1).

With regard to claim 14, optimization of result effective variables such as concentration, absent a showing of clear and convincing evidence of an unexpected results, is obvious and within the level of one of ordinary skill in the art through routine

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experimentation (MPEP 2144). Therefore it would have been obvious to one of ordinary skill in the art to have provided applicant's recited concentration in order to provide improved gas barrier properties, improved sealing and improved peelability.

The difference between the instant claims and Koyama is the Koyama fails to disclose wherein said thermoplastic elastomer comprises a block copolymer and wherein said blend comprises a microcrystalline wax.

Riffer discloses a thermoplastic elastomer comprises a block copolymer (column 5, lines 13-48) and wherein said blend comprises a microcrystalline wax (column 3, lines 13-38) in a cap liner for the purpose of providing improved sealing and gas barrier properties (applies to instant claims 10 and 13).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a thermoplastic elastomer comprises a block copolymer and wherein said blend comprises a microcrystalline wax in the liner of Koyama in order to provide improved sealing and gas barrier properties as taught or suggested by Riffer.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 8-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/400,304. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of copending Application No. 10/400,304 encompasses the subject matter of at least the independent claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins
Primary Examiner
Art Unit 1772



MCM
August 19, 2005